

**CONFIDENTIAL**

July 12, 2021

[Elected Official]  
City of Chicago

Chicago, IL 606\_\_

**Re: Case No. 21012.A / City-owned Property, Duties of Personnel Staff of Elected Officials**

Dear [Elected Official],

On April \_\_, 2021, you contacted our Executive Director and inquired whether the City's Governmental Ethics Ordinance (the "Ethics Ordinance") would allow you to ask a member of your staff, a City employee, while that individual is on City-compensated time, to schedule appointments for you that are arguably related to, but are not themselves purely City or political activities, such as \_\_\_\_ appointments.

As explained in this advisory opinion, the Board has determined that using City resources and property in this manner constitutes an unauthorized use of City-owned property, and is prohibited by §2-156-060 of the Governmental Ethics Ordinance ("Ethics Ordinance"). This opinion summarizes the relevant facts and explains our determination.

**I. Facts**

While the example of a personal appointment you gave was the scheduling of a \_\_\_\_ appointment, the Board, in this opinion, will also consider the broader question of the extent to which an elected or appointed City official or supervisory City employee may ask a subordinate employee to schedule personal appointments or undertake personal tasks for the official or supervisory employee that may be arguably related to, but are not themselves part of, the City Official's City or political<sup>1</sup> activities.

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<sup>1</sup> We note here that asking a subordinate employee to make appointments that are related to your political activities is addressed by different Ethics Ordinance provisions. Specifically, §§2-156-135(a) – (f) prohibit you from, among other things, intentionally misappropriating City resources, such as your staff's compensated time, in connection with prohibited political activity; or from requiring any employee to perform prohibited political activity as part of their City duties or as a condition of employment or during any compensated time off; and they prohibit employees from engaging in prohibited political activity while on compensated time; however, these subsections do not prohibit such

## **II. Relevant Governmental Ethics Ordinance Provision**

In this opinion, we will discuss and interpret the following Ordinance section:

**§2-156-060. City-owned property. No official or employee shall engage in or permit the unauthorized use of any real or personal property owned or leased by the City for City business.**

## **III. Legal Analysis**

In applying the law to the facts before it, the Board concludes that a City employee's compensated time and efforts made during that time constitute City property, both tangible and intangible, for purposes of the Ethics Ordinance. As such, any use of a City employee's time and/or efforts that is not strictly for City purposes is unauthorized. Accordingly, a City elected or appointed official or supervisory employee may not ask a City employee they supervise, or who is a subordinate member of their staff or agency, to perform a task that is a personal matter for the official or supervisor and not related to the employee's job duties. Such requests are prohibited. This is a bright-line rule.<sup>2</sup>

While the rule is clear and certain, the Board recognizes that unforeseen and urgent situations occur in all of our lives. Those situations may compel, on rare occasions, a City elected or appointed official or supervisory employee to reach out to a subordinate employee for assistance. Each situation must be analyzed and evaluated on its own merits. That said, the rule remains as set forth above. Any violation of this prohibition will result in an appropriate sanction.

To accommodate true unforeseen and urgent situations, the Board advises that if presented with a complaint alleging a violation of this rule, the Board will consider the presence, or absence, of all of the following factors in imposing any appropriate penalties:

- 1) whether there was, in fact, a true unforeseen and urgent situation;
- 2) whether the personal task given to the employee was demeaning or disrespectful to the employee;
- 3) whether the employee's assent to perform the task was truly voluntary; and
- 4) whether the time commitment required of the employee to perform the personal task meaningfully detracted from the employee's normal job duties.

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activities undertaken on a voluntary basis while the employee is not on compensated time. "Compensated time" is defined in §2-156-010(e-3) as "any time worked by or credited to an employee that counts toward any minimum work time requirement imposed as a condition of employment with the City, but does not include any designated City holidays or any period when the employee is on an approved vacation or leave of absence."

<sup>2</sup> Cf. Advisory Opinion 97-08, Arizona Supreme Court Judicial Ethics Committee, "Using Court Staff for Personal Errands" (June 17, 1997): [https://www.azcourts.gov/portals/137/ethics\\_opinions/1997/97-08.pdf](https://www.azcourts.gov/portals/137/ethics_opinions/1997/97-08.pdf)

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**IV. Penalties for Violating the Ordinance’s Use of City-owned property provision.**

We advise you that there are potentially severe penalties for violating this provision. Any person found to have violated the Ordinance’s City-owned property provision shall be subject to a fine of not less than \$1000 and not more than \$5000 for *each* offense, pursuant to Ordinance §2-156-465 (b)(8), or other appropriate sanction as the Board may determine in its sole discretion. Moreover, the Board shall make public any determination that there have been Ordinance violations, along with any penalties assessed.

**V. Reliance and Reconsideration.**

Our determinations and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this opinion. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter those determinations or advice. Please note, as well, that this opinion is addressed to the facts presented and may be relied upon only by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

If there are additional material facts and circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. As provided in Section 3-8 of the Board’s Rules and Regulations, a request for reconsideration must: 1) be in writing; 2) explain the material facts and circumstances that are the basis for the request; and 3) be received by the Board within fourteen (14) City business days of the date of this opinion, that is, before the close of business on Friday, July 30. If there are additional facts you wish the Board to consider, as noted above, please contact Steve Berlin, our Executive Director, or Lisa Eilers, our Deputy Director.

Thank you for your thoughtfulness in requesting this opinion, and in advance for your compliance with it. If you have questions about this or any other matter, please contact us.

Sincerely,

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William F. Conlon, Chair